

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIE MCNAIR,	§
	§
Defendant Below-	§ No. 234, 2011
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0805040580
Plaintiff Below-	§
Appellee.	§

Submitted: July 6, 2011  
Decided: September 8, 2011

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

**ORDER**

This 8<sup>th</sup> day of September 2011, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The appellant, Willie McNair, filed this appeal from the Superior Court's denial of his motion for correction of sentence. The State of Delaware has filed a motion to affirm the judgment below on the ground that it is manifest on the face of McNair's opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that McNair, while being held in default of bail on other criminal charges, was arrested on May 29, 2008 and charged with possession of burglary tools, possession of drug paraphernalia and trespassing. McNair pled

guilty to possession of drug paraphernalia and trespassing on December 4, 2008. The Superior Court sentenced McNair on the paraphernalia charge, effective May 29, 2008, to one year at Level V incarceration to be suspended immediately for one year at Level III probation. McNair was ordered to pay a \$500 fine on the trespassing charge. In April 2011, McNair filed a motion for correction of illegal sentence, which the Superior Court denied. This appeal followed.

(3) In his opening brief on appeal, McNair contends that the Superior Court erred in denying his motion because the sentence imposed on him exceeded the statutory limits. McNair asserts that possession of drug paraphernalia is a class A misdemeanor, which carries a maximum term of incarceration of one year.<sup>1</sup> McNair contends that the Superior Court's sentence, which was dated December 4, 2008 but made effective May 29, 2008, exceeded the statutory one-year limit by 189 days.

(4) We find no merit to McNair's contention. By backdating the effective date of McNair's sentence to May 29, 2008, the Superior Court gave McNair credit for 189 days of time served on his conviction from the date of his arrest until his sentencing on December 4, 2008.<sup>2</sup> The Superior Court imposed a one-year sentence at Level V incarceration suspended for one year at Level III probation.

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<sup>1</sup> DEL. CODE ANN. tit. 16, § 4774 (2003).

<sup>2</sup> See *McNair v. State*, 2011 WL 768639 (Del. Mar. 4, 2011) (affirming the denial of McNair's motion for credit for time served on the ground that he already was properly credited with 189 days served on his sentence).

This sentence was within the statutory limits, and the Superior Court did not err in denying McNair's motion for correction of sentence.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice